

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 22, 2021

Lyle W. Cayce
Clerk

No. 21-60618

IN RE JAMES ALLEN HIGGINBOTHAM,

Movant.

Motion for an order authorizing
the United States District Court for the
Northern District of Mississippi to consider
a successive 28 U.S.C. § 2254 application

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

James Allen Higginbotham, Mississippi prisoner # 149421, seeks authorization to file a successive 28 U.S.C. § 2254 application to challenge his conviction for murder and resulting sentence of life imprisonment. In his proposed § 2254 application, Higginbotham seeks to argue that the factual basis was insufficient to support his conviction and that the defective factual basis resulted in a due process violation.

To obtain authorization to file a successive § 2254 application, Higginbotham must make a prima facie showing that his claims rely on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” or that “the factual predicate for the claim[s] could not have been discovered previously through the exercise of due diligence” and “the facts underlying the claim[s], if

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proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty.” 28 U.S.C. § 2244(b)(2); *see* § 2244(b)(3)(C).

Higginbotham has not made the requisite showing. *See* § 2244(b)(2). To the extent Higginbotham raises a claim of actual innocence, we do not recognize a freestanding claim of actual innocence on federal habeas review. *See In re Swearingen*, 556 F.3d 344, 348 (5th Cir. 2009). Moreover, even if a convincing claim of actual innocence could overcome § 2244(b)’s limits on filing a successive application, Higginbotham has not made the necessary showing. *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *Schlup v. Delo*, 513 U.S. 298, 327-29 (1995).

Accordingly, IT IS ORDERED that Higginbotham’s motion for authorization to file a successive § 2254 application is DENIED.



Certified as a true copy and issued
as the mandate on Sep 22, 2021

Attest: *Jyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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September 22, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-60618 In re: James Higginbotham
USDC No. 1:21-CV-102

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Whitney M. Jett, Deputy Clerk
504-310-7772

Mr. David Crews
Mr. James Allen Higginbotham